

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for
the purposes of section 87B

by

Barossa Farm Produce Pty Ltd (ACN 095 717 347)

Persons giving this undertaking

- (1) This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Barossa Farm Produce Pty Ltd ACN 095 717 347 of 50 Pheasant Farm Road, Nuriootpa, South Australia 5355, for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (known until 31 December 2010 as the *Trade Practices Act 1974* (Cth) (**TPA**) (collectively, **the Act**).

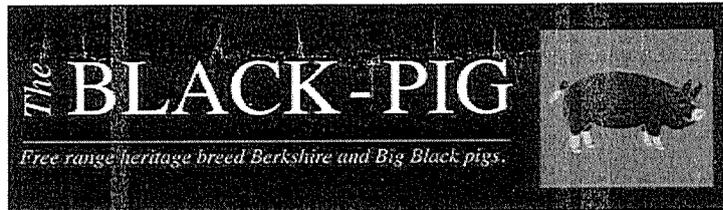
Background

- (2) Barossa Farm Produce Pty Ltd (**Barossa Farm Produce**) is duly incorporated pursuant to the *Corporations Act 2001* (Cth) and is registered in South Australia.
- (3) At all material times, Barossa Farm Produce carried on business, in trade or commerce, trading under the business name Barossa Farm Produce.
- (4) At all material times Saskia Megan Beer was and is the sole director of Barossa Farm Produce.
- (5) Barossa Farm Produce engages principally in the production, marketing and distribution of premium pork, poultry and game products to consumers, through restaurants and retailers in South Australia, Victoria, New South Wales and Queensland, and through farmers markets in South Australia.
- (6) In the period from 2008 until on or about 6 June 2013, Barossa Farm Produce supplied or offered for supply, to consumers, certain smallgoods products under the brand name "The Black-Pig" including:
 - (a) 100g packs of boneless leg ham;
 - (b) twin packs of chorizo;
 - (c) 100g packs of lacshinken;
 - (d) 100g packs of pancetta;
 - (e) 100g packs of prosciutto;
 - (f) 100g packs of sugar cured belly bacon (speck); and

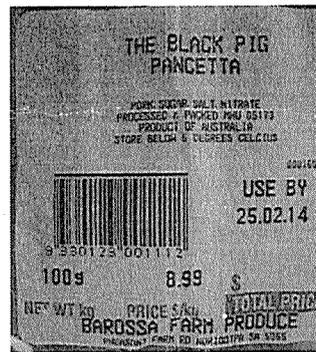
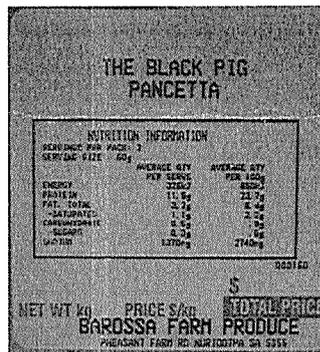
(g) 100g packs of sugar cured middle bacon,

(Black Pig labelled smallgoods).

- (7) In the period from 2008 until on or about 6 June 2013, Black Pig labelled smallgoods featured labels with varying descriptions, but which were largely consistent with the following labels:



- (8) In the period from 2008 until on or about 6 June 2013, Black Pig labelled smallgoods had affixed to them labels largely consistent with the following nutrition information and barcode labels:



Conduct of concern

“Free range” representations

- (9) In the period from 9 December 2010 until on or about 28 May 2013, in relation to the supply of Black Pig labelled smallgoods, Barossa Farm Produce made representations:
- (a) on the packaging;
 - (b) on the websites www.saskiabeer.com and www.barossafarmproduce.com; and
 - (c) on the Facebook page www.facebook.com/theblackpigbarossa;

that the pork used in Black Pig labelled smallgoods was free range, when, in fact, that was not the case.

“Heritage Berkshire/Black Pig” representations

- (10) In the period from 9 December 2010 until on or about 28 May 2013, in relation to the supply of Black Pig labelled smallgoods, Barossa Farm Produce made representations:
- (a) on the packaging, nutrition information labels and barcode labels;
 - (b) on the websites www.saskiabeer.com and www.barossafarmproduce.com;
 - (c) on the Facebook page www.facebook.com/theblackpigbarossa; and
 - (d) at an “Autumnal Cooking Class” held in Nuriootpa, South Australia,

that the pork used in Black Pig labelled smallgoods was from heritage Berkshire pigs, or other heritage black pig breeds, when, in fact, that was not the case.

“Provenance” representations

- (11) In the period from at least 17 January 2013 to on or around 22 May 2013 in relation to the supply of Black Pig labelled smallgoods, Barossa Farm Produce made representations on the websites www.saskiabeer.com and www.barossafarmproduce.com that it knew the origin of every animal used in the production of Black Pig labelled smallgoods, when, in fact, that was not the case.

Admissions

- (12) Barossa Farm Produce acknowledges that it did not have adequate systems in place to verify the accuracy of the representations in paragraphs (9), (10) and (11) above, and that it did not have a reasonable basis for making those representations.
- (13) Barossa Farm Produce acknowledges the concerns of the ACCC and that by making the representations set out at paragraphs (9), (10) and (11) above, it is likely to have contravened:
- (a) sections 52 and 53(a) of the TPA, insofar as the conduct occurred before 1 January 2011; and
 - (b) sections 18 and 29(1)(a) of the Australian Consumer Law (found at Schedule 2 to the CCA) (**ACL**), insofar as the conduct occurred on and after 1 January 2011.
- (14) Barossa Farm Produce has cooperated with the ACCC throughout its investigation.
- (15) Since becoming aware of the ACCC's investigation, Barossa Farm Produce has taken steps to implement systems to verify the accuracy of the representations it makes about the products it supplies, and has agreed to resolve the ACCC's concerns by providing this undertaking to the ACCC pursuant to section 87B of the Act.

Commencement of undertaking

- (16) This undertaking comes into effect when:
- a. the undertaking is executed by Barossa Farm Produce; and
 - b. the ACCC accepts the undertaking so executed.
- (17) Upon the commencement of this undertaking, Barossa Farm Produce undertakes to assume the obligations set out in paragraphs (18), (19) and (20) below.

Undertakings

Conduct

- (18) Barossa Farm Produce undertakes for the purposes of section 87B of the Act, that for the period of three (3) years from the date of this undertaking coming into effect, it will not, whether by itself, its servants, agents or howsoever otherwise, in connection with the labelling, packaging, supply or possible supply, or promotion by any means, of Black Pig labelled smallgoods, make any representations:

- (a) about the breed or type of pigs used in Black Pig labelled smallgoods, in circumstances where it does not know the breed or type of pigs used; and
- (b) that it knows the origin of every animal used in the production of Black Pig labelled smallgoods, in circumstances where it does not know the origin of every animal used.

Consumer Law Compliance Training

- (19) Barossa Farm Produce undertakes for the purposes of section 87B of the Act, that all current Directors will:
 - (a) at its own expense, and within three (3) months of the date of this undertaking coming into effect, attend practical training focusing on sections 18 and 29 of the ACL;
 - (b) ensure that the training referred to in paragraph 19(a) above is administered by a suitably qualified compliance professional or legal practitioner with expertise in consumer law; and
 - (c) provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 19(a) above to the ACCC within fourteen (14) days of completion of the training verifying that such training has occurred, and who attended.

Corrective Notice

- (20) Barossa Farm Produce undertakes for the purposes of section 87B of the Act, that it will, at its own expense and within seven (7) days of the date of this undertaking coming into effect, publish or cause to be published, the corrective notice set out in **Annexure A** on the websites:
 - (a) www.barossafarmproduce.com; and
 - (b) www.saskiabeer.com

and shall ensure that the corrective notice is:

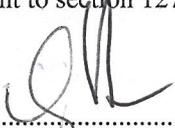
- (c) in colour;
- (d) viewable immediately on a computer screen upon access to the websites;
- (e) crawlable (i.e. its contents may be indexed by a search engine);
- (f) of a size that consists of at least 40% of the images on the screen; and
- (g) maintained on the websites for the period of sixty (60) days of the date of this undertaking coming into effect.

Acknowledgments

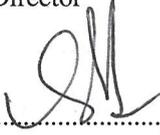
- (21) Barossa Farm Produce acknowledges that:
- (a) the ACCC will make this undertaking publicly available including by publishing it on the ACCC's public register of s. 87B undertakings on its website;
 - (b) the ACCC will, from time to time, make public reference to the undertaking including in news media statements and in ACCC publications; and
 - (c) this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

EXECUTED BY

Barossa Farm Produce Pty Ltd ACN 095 717 347 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.



.....
Secretary/Director



.....
Director

This...10th.....day of June 2014

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE *COMPETITION AND CONSUMER ACT 2010*.



.....
Rodney Graham Sims
Chairman

This...13th.....day of June 2014

ANNEXURE A

Website Corrective Notice

CORRECTIVE NOTICE

[BFP Logo]

Between 9 December 2010 until on or about 28 May 2013, Barossa Farm Produce made false or misleading representations on product packaging, on the websites www.saskiabeer.com and www.barossafarmproduce.com, on the Facebook page www.facebook.com/theblackpigbarossa, and at an “Autumnal Cooking Class” held in Nuriootpa, South Australia, that:

- (1) the pork used in its “Black-Pig” labelled smallgoods was from:
 - (a) heritage Berkshire or other heritage black pig breeds;
 - (b) pigs that were free range; and
- (2) it knew the origin of every animal used in the production of “Black Pig” labelled products.

Following concerns raised by the ACCC, Barossa Farm Produce has provided a court enforceable undertaking to the ACCC to ensure that similar conduct will not occur again.



Australian
Competition &
Consumer
Commission

Corrective Notice placed and paid for by Barossa Farm Produce pursuant to an undertaking accepted by the ACCC